

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: CS/SB 980

INTRODUCER: Community Affairs Committee and Senator Alexander

SUBJECT: Local Government Land Development Regulation

DATE: February 14, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Fav/CS
2.			CU	
3.				
4.				
5.				
6.				

I. Summary:

This committee substitute (CS) provides that electrical substations shall be a permissible land use in all land use categories and zoning districts. If a local government does not enact reasonable standards for setback and landscape buffers, the CS provides standards. The CS provides a timeframe for local governments that have adopted standards for siting an electrical substation in a land use or zoning district to grant or deny an application to site an electrical substation or the application is deemed automatically approved.

Also, local governments may not require a permit or other approval for vegetation management and tree trimming within an established right-of-way for an electrical transmission or distribution line. At the request of a local government, utility companies are required to meet with the local government to discuss and submit the utility's vegetation maintenance plan. The CS requires a utility to give the local government advance notice before conducting vegetation-maintenance activities in an established right-of-way, specifies standards for vegetation maintenance, and limits the types of trees or vegetation that may be planted in an established right-of-way for an electric utility.

Finally, the CS requires an electric utility to provide the applicable regional planning council with a report on the utility's 3-year plans for siting electrical substations and this information is to be included in the regional planning council's annual report.

This CS creates sections 163.3207, 163.3209, and 186.008 of the Florida Statutes.

II. Present Situation:

Comprehensive Planning and Zoning

The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3164 – 163.3247, F.S., requires local governments to plan for future development and growth through the adoption and amendment of their comprehensive plans. Local governments enjoy broad constitutional and statutory powers to plan for and regulate land use. A local government's comprehensive plan and land use classifications dictate the allowable land uses for each parcel.

Each local government is required to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.¹ Section 163.3164(23), F.S., defines the term “land development regulations” as ordinances enacted by local governments relating to any aspect of development, including zoning, rezoning, subdivision, building construction, sign regulations, or any other regulations controlling land development. A substantially affected person, as defined in ch. 120, F.S., may challenge a land development regulation on the basis that it is inconsistent with the local government's comprehensive plan.² Citizens also enjoy standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.³

Electrical Power Plant and Transmission Line Siting

Part II of ch. 403, F.S., governs electrical power plant and transmission line siting. It sets forth a process for applying for electrical power plant site certification with the Department of Environmental Protection. Within 90 days after the department receives a complete application, a designated administrative law judge holds a land use hearing in the county of the proposed site.⁴ The sole issue for determination at the hearing is whether the proposed site is consistent and in compliance with the jurisdiction's existing land use plan and zoning ordinances.⁵ For purposes of this application process, an associated transmission line may include any proposed terminal or intermediate substations or substation expansions at the applicant's option.⁶

Electrical substations for distribution lines are typically sited as a special use or conditional use through the local government planning and zoning process. The terms “special use” or “conditional use” refer to those land uses that are not permitted outright under a local government's zoning code, but may be approved by the zoning board.

Vegetation Management and Tree Trimming in a Utility Right-of-Way

Vegetation management plans are important to electric utility providers in order to avoid tree-related outages. Depending on the species of trees, the management plan will establish a schedule and an allowable distance for trimming. Vegetation management may also include the removal of nuisance trees, the use of growth retardants, and selective directional trimming to maintain a balanced canopy. There are national standards for tree care. For example, ANSI A300

¹ S. 163.3202(1), Fla. Stat. (2005).

² S. 163.3213, Fla. Stat. (2005).

³ S. 163.3215, Fla. Stat. (2005).

⁴ S. 403.508(1), Fla. Stat. (2005).

⁵ S. 403.508(2), Fla. Stat. (2005).

⁶ S. 403.503(12), Fla. Stat. (2005).

Part 1 provides standards for tree, shrub, and other woody plant maintenance, including pruning. The ANSI Z133.1-2000 provides standards and safety requirements for pruning, trimming, repairing, maintaining and removing trees, and cutting brush.

Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Electric utility providers may be subject to these tree ordinances or permit requirements. Local governments may also afford certain trees protection because they are considered an important community resource. The terms used to describe such trees may include heritage, historic, landmark, legacy, special interest, significant, or specimen trees.

Regional Planning Councils' Annual Report

Florida has 11 regional planning councils that serve as a link between the state and local governments that share mutual resources, characteristics, and issues within an area. Each regional planning council includes members from counties and municipalities located in the region's planning district and gubernatorial appointees. Section 186.513, F.S., requires each regional planning council to provide an annual report on its activities to the department and the local general-purpose governments within its jurisdiction. Interested persons may also obtain a copy of the report for a fee.

III. Effect of Proposed Changes:

Section 1 creates s. 163.3207, F.S., to provide legislative intent regarding the siting of electrical infrastructure. Under this CS, electrical substations shall be a permissible use in all land use categories and zoning districts. Local governments may still enact reasonable setback and landscape buffer standards for substations. If a local government has not adopted reasonable standards, the CS prescribes standards.

The CS requires a local government that has adopted standards for siting an electrical substation within any of its land use and zoning districts to grant or deny an application to locate an electrical substation in that land use or zoning district within 60 business days after receiving the properly completed application. If the local government fails to take action within the specified timeframe, the application is deemed automatically approved. The CS provides timeframes for determining the application is complete. It allows for public input in a workshop or informational format if the local government has applicable local regulatory land use procedures for a conditional use or special exception that are in effect on the effective date of the CS.

Section 2 creates s. 163.3209, F.S., to prohibit a local government from requiring a permit or other approval for vegetation management and tree pruning or trimming within an established right-of-way for any electrical transmission or distribution line. The utility must give the local government a minimum of 5 days' advance notice before conducting vegetation-maintenance activities in an established right-of-way. At the request of a local government, the electric utility shall meet with the local government to discuss and submit the utility's vegetation maintenance plan, including trimming specifications and management practices.

The CS specifies national standards for a utility to follow when conducting vegetation maintenance.⁷ Vegetation management must be supervised by the utility, licensed contractors under the control of the utility, or certified arborists. The CS limits the types of trees or vegetation that may be planted in an established right-of-way for an electric utility. However, local government ordinances or rules governing the removal of specimen trees, historical trees, or trees within canopy road protection areas are still applicable to utilities. Franchise agreements between an electric utility and a local government are not affected by this section.

Section 3 creates s. 186.008, F.S., to require an electric utility to provide the applicable regional planning council with a report on the utility's 3-year plans for siting electrical substations within the local governments' jurisdictions. This information is to be included in the regional planning council's annual report.

Section 4 provides the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS would streamline the process for siting an electrical substation by providing that new substations are a permissible land use in all land use categories and zoning districts. Also, an electric utility is no longer required to obtain a permit or other approval from local government for vegetation management and tree trimming within an established right-of-way for an electric power line.

C. Government Sector Impact:

None.

⁷ The utility must follow ANSI A300 (Part I) - 2001 Pruning Standards and also ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush – Safety Requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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